



## Top Two Primary Frequently Asked Questions

### **What does this mean for voters?**

In August 2008, the State will conduct a Top Two Primary. Voters will not have to pick a party and will be able to choose among all candidates for each office. In each race, the two candidates with the most votes will advance to the General Election.

### **What is a Top Two Primary?**

A Top Two Primary allows voters to choose among all candidates running for each office. Voters do not have to declare a party affiliation in order to vote in the primary.

Candidates for partisan office may state a preference for a political party, which is listed on the ballot. Candidates do not have to be supported, nominated or endorsed by that party. The two candidates who receive the most votes in the Primary Election qualify for the General Election. Candidates must also receive at least 1% of the votes cast in that race in order to advance to the General Election.

### **What does the candidate's "party preference" mean in a Top Two Primary?**

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.

### **How did the Top Two Primary become law?**

The Top Two Primary was passed by the people in 2004 as an initiative. I-872 passed by almost 60%.

### **What happened after I-872 passed?**

In May 2005, the state Democratic, Republican and Libertarian parties sued in federal court to prevent its implementation. The political parties argued that the Top Two Primary system violated their right to free association.

The federal District Court agreed with them and issued an order in July 2005 prohibiting the State from implementing the Top Two Primary. The State appealed, but the Court of Appeals also agreed with the parties in an order issued in 2006. The State appealed to the U.S. Supreme Court.

### **What did the U.S. Supreme Court decide?**

The court upheld the constitutionality of I-872. The Supreme Court reasoned that, since this form of primary has never been used, the political parties' challenge was based on

assumptions. The Court decided that it would not nullify the vote of the people based on speculation. Click [here](#) to read the Supreme Court's opinion.

**Could a race in the General Election include two candidates who prefer the same party?**

Yes. The candidates in each race who advance to the General Election will be the two who receive the most votes in the Primary. It is possible that both candidates who advance to the General Election prefer the same party.

**Can a voter still write-in a candidate?**

Yes. Each race on the ballot will still have a write-in line and you can write in the name of a candidate.

**What offices are affected?**

The Top Two Primary applies to elections for partisan office. This includes the U.S. Senate and House of Representatives, the State Legislature, partisan statewide offices such as Governor, and partisan county offices such as County Commissioner or County Treasurer.

The Top Two Primary does not apply to elections for President and Vice President, or nonpartisan office such as judicial office, municipal office, or a junior taxing district such as fire district or school board.

The Top Two Primary does not apply to an election for county office if the county has a charter and the charter specifies a different election system for county offices. This is the case for county offices in Pierce County.

**Does the U.S. Supreme Court opinion impact the Presidential Primary?**

No. The Top Two Primary is for local, state and Congressional races. The Presidential Primary is a separate system that only applies to nominating candidates for President, and how the major parties allocate their delegates to the national conventions. The relevant statutes are RCW 29A.56.010 through RCW 29A.56.060.

**Where can I find more information about the Top Two Primary?**

The Secretary of State's Office posts information about Initiative 872, the administrative rules to implement Initiative 872, and the court documents in the legal challenge on its website at: <http://www.secstate.wa.gov/elections/toptwo.aspx>

**Questions from Candidates:**

**What does this mean for candidates?**

Candidates must still file a declaration of candidacy with the County Auditor or the Secretary of State, depending on the office. Candidates will be allowed to state on the declaration of candidacy which political party they prefer, and that information will be listed on the ballot.

This is strictly an expression of that candidate's preference. It does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate. For purposes of conducting elections, people running for

office are not members of a particular party or candidates of a particular party. Rather, they are candidates running for office, and are provided the opportunity to express a preference for a political party.

**When is the filing period?**

The regular filing period is the first week of June. This year, that is June 2-6, 2008. Candidates may file in person, by mail or, if filing with the Secretary of State's Office, online. Declarations of Candidacy filed by mail may be received beginning May 16, 2008.

**Are minor party candidates still required to conduct conventions and collect signatures in order to run for office?**

No. All candidates use the same procedures to file for office and appear on the Primary Election ballot. The Top Two Primary evens the playing field for candidates. Candidates may list any party as the party that they prefer.

Minor party and independent candidates for President and Vice President are an exception. They must still collect signatures and obtain the consent of the candidates.

**Can the political parties prevent a candidate from expressing a preference for their party?**

No. Candidates are permitted to express a preference for any political party. The court ruled that the ability of candidates to express a preference for a party does not severely burden the rights of the party.

**Can the political parties still nominate candidates?**

Yes. State law no longer dictates how political parties conduct their nominations. Now, the state and local parties decide how to conduct their nominations. The rules for party-run nominations vary party to party, and even between the state and local parties. Political parties can nominate multiple candidates for the same race. The Court stated:

Whether parties nominate their own candidates outside the state-run primary is simply irrelevant. In fact, parties may now nominate candidates by whatever mechanism they choose because I-872 repealed Washington's prior regulations governing party nominations.

**Can the political parties demand that their nominees be distinguished on the ballot?**

No. The law does not allow nominations or endorsements by interest groups, political action committees, political parties, labor unions, editorial boards, or other private organizations to be printed on the ballot.

The Supreme Court ruled the political parties do not have a constitutional right to have their nominees distinguished on the ballot. The Supreme Court said:

It is true that parties may no longer indicate their nominees on the ballot, but that is unexceptionable: The First Amendment does not give political parties a right to have their nominees designated as such on the ballot. ... Parties do not gain such a right simply

because the State affords candidates the opportunity to indicate their party preference on the ballot. “Ballots serve primarily to elect candidates, not as forums for political expression.”

**Can candidates advertise themselves as nominees of a political party?**

Yes. Candidates can promote themselves in voters’ pamphlets, advertisements, and other forums as the nominees of a political party.

**After candidate filing week, can a major party fill vacancies on the major party ticket?**

No. This process was specifically repealed in I-872 because there is no major party ticket in a Top Two Primary. All candidates are treated the same.

A race will only be reopened for a special filing period if there is a void in candidacy, meaning no candidates filed during the regular filing period.

**If only one or two candidates file, will that race skip the Primary and only appear on the General Election ballot?**

No. Even if only one or two candidates file for a partisan office, that race will still appear in the Primary Election. It is only in nonpartisan elections that the race skips the Primary when just one or two candidates file. The relevant statute is RCW 29A.52.220.

**If a candidate for partisan office who was one of the top two vote-getters in the Primary dies or is disqualified before the General Election, will the party be allowed to name a replacement?**

No. In a Top Two Primary, a candidate’s party preference is purely for informational purposes and does not play any role in the administration of the election. Because the candidates are not representatives or nominees of a political party, a party is not allowed to name a replacement candidate. The laws that previously allowed the political parties to replace deceased or disqualified candidates were repealed in I-872.